UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

UNITED STATES OF AMERICA

V. CRIMINAL NO. 3:18-CR-267-DPJ-LRA

JONATHAN BEASLEY

ORDER

Defendant Johnathan Beasley asks the Court to suppress evidence that a firearm was found in his car. After conducting an evidentiary hearing and receiving supplemental briefs, the Court denies Beasley's motion.

I. Background

This all began with an alleged act of domestic violence. On March 19, 2017, Officer Devita Recio with the Jackson Police Department (JPD) responded to a report that Beasley had threatened to kill the mother of his child. When Recio arrived, the alleged victim said Beasley made the threats over the phone and through text messages. Another witness at the scene stated that she saw Beasley with a gun.

While Recio was on the scene, dispatch informed him that Beasley had wrecked his car a short distance away and that he was armed. Recio left the alleged victim and found Beasley at a nearby gas station. The car was wrecked and had two flat tires. Recio restrained Beasley for the domestic complaint and patted him down for weapons; he found none. Beasley "was then handcuffed, and placed in the police officer's patrol car." Def.'s Mot. [30] at 2. After officers secured Beasley in the patrol car, Recio walked toward the disabled vehicle, smelled burnt marijuana, opened the door, and saw a firearm. Beasley was taken to JPD; he was later charged

in this Court with being a felon in possession of a firearm. Officer Recio did not have a search warrant, and Beasley says the evidence should be suppressed.

II. Analysis

The parties dispute whether Officer Recio discovered the firearm following a valid search incident to arrest under *Arizona v. Gant*, 556 U.S. 332 (2009). In *Gant*, the Supreme Court held that there are "circumstances unique to the vehicle context [that] justify a search incident to a lawful arrest when it is 'reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.'" *Id.* at 343 (quoting *Thornton v. United States*, 541 U.S. 615, 632 (2004) (Scalia, J., concurring)). During the hearing, Beasley argued that *Gant* is inapplicable because he was merely detained and not arrested at the time Recio searched the vehicle, so the Court requested supplemental briefing on when an arrest becomes formal and whether it must occur before the search.

The Fifth Circuit faced a similar question in *United States v. Hernandez*, where an officer physically restrained a suspect, searched his pockets, and then took him to a command post where he was formally arrested. 825 F.2d 846, 851 (5th Cir. 1987). The court first noted that there are "three distinct levels or tiers of police-citizen contact within the context of the fourth amendment." *Id.*

> On the first level is mere communication between a citizen and an officer, involving no element of detention or coercion. Such contact does not implicate the fourth amendment. On the second level are brief detentions or investigatory stops which must be supported by reasonable suspicion on the part of the detaining officer based on specific and articulable facts which, taken together with rational inferences from these facts, reasonably warrant an intrusion. Full scale arrests occupy the third tier, involving the types of restrictions on liberty imposed by formal custody.

Id. (internal quotation marks and footnote omitted). Normally, "[t]he removal of the suspect from the scene of the stop to police headquarters usually marks the point at which an investigative stop becomes a de facto arrest." *Id.*

There is no question that Beasley had reached at least stage two, and if he had not arrived at stage three, then he did so a short time later when he was taken to JPD. Indeed, his level of detention was even more restrictive than the defendant in *Hernandez*, yet the court observed "that the events leading up to the arrest [may occur] in such close sequence that it is immaterial that the arrest occurred later in time than the search incident to that arrest." *Id.* at 852 (internal quotation marks and footnote omitted) (collecting cases); *see also United States v. Wells*, No. 94-41145, 1995 WL 581849, at *3 (5th Cir. Sept. 8, 1995) ("A search incident to the arrest may be valid even if the search occurred at the same time as or just before the actual arrest, as long as the arrest follows quickly on the heels of the challenged search.").[1]

Beasley now argues that the search was nevertheless invalid because there was no probable cause to arrest him and the search was not related to the cause of the arrest. Def.'s Mem. [40] at 11. To begin, Officer Recio had probable cause to arrest Beasley. Probable cause exists "when the facts and circumstances within the knowledge of the arresting officer and of which he has reasonable trustworthy information are sufficient in themselves to warrant in a person of reasonable caution the belief that an offense has been or is being committed." *United States v. Woolery*, 670 F.2d 513, 515 (5th Cir. 1982). This is based on the totality of the circumstances. *Id.*

[1] Although *Hernandez* was decided before *Gant*, *Gant* does not suggest that the analysis is no longer valid. Nor did *Gant* overrule *Rawlings v. Kentucky*, 448 U.S. 98, 111 (1980).

As Beasley observed, Officer Recio's testimony was weak when pressed for details and names. But the basic facts, most of which he contemporaneously documented, establish probable cause. For starters, he spoke personally with the complainant, who told him that Beasley threatened to kill her over the phone and in text messages. Her friend—who also spoke with Officer Recio—saw Beasley with a gun. The dispatcher then told Officer Recio that Beasley had wrecked his vehicle near the residence and was armed. When Recio arrived, he in fact saw Beasley near a wrecked and disabled vehicle. That Beasley was first seen near the residence and then with the wrecked car indicates that he drove the vehicle, and the wreck suggests more erratic behavior that night. A "person of reasonable caution" would believe that an offense had been or was being committed. *Woolery*, 670 F.2d at 515.

As for the subsequent search, "it [was] reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle." *Gant*, 556 U.S. at 344 (citation omitted). As noted, an eyewitness told Officer Recio that Beasley had a gun and suggested that he made a threatening gesture with it. Whether Beasley had a gun would be relevant to the alleged death threats and intimidation. Yet the pat down revealed no weapons. *Gant* does not require certainty, and under the circumstances it was "reasonable to believe" the gun "might be found in the vehicle" since it was not on his person. *Id.*

Finally, there was a reasonable basis to believe Beasley had been a recent occupant of the vehicle. Dispatch told Recio that Beasley had wrecked his car shortly after being seen near the alleged victim's residence. Recio left when he received the dispatch, and Beasley's mother said the officers arrived 20 to 30 minutes after she did, though she was not sure about the precise times. Beasley was a recent occupant. *See United States v. Palmer*, 206 F. App'x 357, 359 (5th

Cir. 2006) (defendant was a recent occupant when the vehicle was searched twenty-four minutes after he exited).

III. Conclusion

The Court has considered all arguments. Those not expressly addressed would not have changed the outcome. For the foregoing reasons, Defendant's Motion to Suppress [30] is denied.

SO ORDERED AND ADJUDGED this the 11th day of October, 2019.

s/ *Daniel P. Jordan III*
CHIEF UNITED STATES DISTRICT JUDGE